HON'BLE MR. JUSTICE BILAL NAZKI
AND
HON'BLE MR. JUSTICE G.CHANDRAIAH

W.P.NOs. 25371, 25652, 25654, 25668 & 25633 OF 2005

Dt. 25.8.2006

Between:

M/s. Idupulapadu Cotton Mills Ltd.
…Petitioner

and

The Assistant Commissioner of Commercial Taxes, VAT

…..Respondent

HON'BLE MR. JUSTICE BILAL NAZKI
AND
HON'BLE MR. JUSTICE G.CHANDRAIAH

W.P.NOs. 25371, 25652, 25654, 25668 & 25633 OF 2005

COMMON ORDER: (Per Hon'ble Mr. Justice Bilal Nazki)

All the writ petitions raise same questions of fact and law and they are disposed of by this common order. Facts of one of writ petitions are taken note of.

In W.P.No. 25371 of 2005 the petitioner has challenged assessment of value added tax in Form VAT-305, dt. 16.11.2005 demanding him to pay tax for a period of 14 years from 11.10.2000 to 10.10.2014.

The case of the petitioner is that the respondent passed, in exparte and hasty, the provisional assessment of value added tax order on 16.11.2005. On account of replacement of the earlier sales tax law by Andhra Pradesh Value Added Tax, 2005, the petitioner company became a VAT dealer under the VAT Act and a VAT registration certificate in terms of Section 17 of the Act was

issued to the petitioner company. The petitioner company is presently an assessee on the file of the respondent. The petitioner company claims to be a large scale industry engaged in the manufacture of cotton yarn having its unit located at Ganapavaram village, near Chilakaluripet town in Guntur district. It is contended that the Government of Andhra Pradesh introduced a liberalized state incentive scheme for setting up new industries in the state and accordingly issued various notifications from time to time whereby tax incentives were given such as sales tax holiday/sales tax deferment, investment subsidy as also power tariff concession. First notification being GO Ms. No. 498 was issued by the Government giving such incentives on 1.6.1989. Subsequently some other notifications were issued and a new industrial policy was framed known as Target 2000 with an object to accelerate industrial development of the state and accordingly GO Ms.No. 108, Industrial and Commerce (IP) Department, dt. 20.5.1996 was issued. The petitioner's application for grant of incentives namely investment subsidy to an extent of 25% of the fixed capital investment and sales tax incentive in the form of deferral was scrutinized by the authorities of the industries department. The application was placed before the state level committee which scrutinized and accorded approval for sanction of investment subsidy as well as the sales tax deferment for a period of 14 years to a maximum of Rs.10,71,66,050/-

which was equivalent to 135% of the total fixed capital investment. The sales tax deferment benefit was directed to be effective from 11.10.2000 to 10.10.2014. Final eligibility certificate was communicated to the petitioner company on 9.10.2001.

It is the contention of the petitioner that the final eligibility certificate alone is a recognized instrument or document which confers the benefits/incentives under G.O.Ms.No. 108. It is further submitted that the petitioner company, for achieving more production and more turnover and also with a view to provide more employment and to develop the industry, on his own accord, added some more spindles. However, he did not seek any additional or further incentives from the Government either investment subsidy or sales tax benefit. Within the resources held by it, the petitioner desired to achieve more production and corresponding increased sales tax turnover. By adding more spindles, the petitioner contended, he has not violated the conditions laid down in G.O.Ms.No. 108. The petitioner wants this Court to decide whether the respondent was entitled to claim sales tax on sales of cotton yarn from the petitioner company during the subsistence of the eligibility certificate and whether the respondent was entitled to read words into the eligibility certificate or the Government order through which the industrial policy of the State was announced and propagated. The second contention raised by the

petitioner is that the order of assessment was made in hasty manner and no opportunity was given to the petitioner to put forth his case.

In the counter-affidavit the first objection was taken to the maintainability of the writ petition on the ground that an efficacious remedy of filing an appeal under Section 31 of the VAT Act was available to the petitioner. It is also contended that the order of assessment was not passed in exparte or in haste. Show cause notice preceding the assessment order was served on the dealer and he was given seven days' time to show cause. The dealer also wrote a letter on 31.10.2005 seeking certain clarification. However, he was given five weeks' time from the last show cause notice to file his reply and the revenue is not expected to wait till the convenience of the assessee. It is contended further that under item No.6 of eligibility certificate given to the petitioner lays down the names of products with capacities product details and it shows the capacity of spindles as 12096. It also shows the fixed capital investment of Rs.10,00,00,000/- in the approved project. Under the GO Ms. No. 108 the petitioner was bound to adhere to and conform to and any contravention on his part would disentitle him to have or avail the benefits and could also render him liable to forgo all the benefits and remit the incentives, if any. The investment subsidy under clause 6.02 and Sales Tax Deferment Limited to 135% of fixed capital investment under Clause

6.03 had to be calculated on the basis of the figures exhibited in item No.9 of the final eligibility certificate. Since the petitioner added spindles without the permission of the respondent, the whole scheme was got disturbed. Clause 6 in G.O.Ms.No.108 lays down,

> "The following are the incentives under this "TARGET – 2000" Scheme:
>
> 6.01) All New Industrial units, whether large, medium or small other than those listed in the Annexure, to be located anywhere in the State of Andhra Pradesh, except within the Municipal Corporation areas of Hyderabad, Vijayawada and Visakhapatnam, and going into commercial production or after November, 15, 1995 are eligible for the following incentives.
>
> 6.02) Investment subsidy: 20% of the fixed capital investment but not exceeding Rs.20.00 lakhs;
>
> 6.03) Deferment/Tax Holiday on Sales Tax: Sales Tax Deferment limited to 135% of Fixed Capital Investment in a period of 14 years. The deferred amount will be treated as deemed loan on making available security of fixed assets of the industry, pari-passu with financial institutions and on finalisation of assessment by the Commercial Tax authorities for each year."

The case of the respondent is that the amount fixed by the eligibility certificate was dependent on the number of spindles proposed for installation at the time of making application for incentive under G.O.Ms.No.108 and any

increase in the number of spindles installed and put for production over and above the original number reported at the time of making of application was a contradiction of the terms and conditions of the final eligibility certificate dt. 9.10.2001. The petitioner company utilized 47,376 spindles during the year 2005-06 as against the recognized capacity of 12096 spindles. It had clearly violated the eligibility certificate in so far as the excess capacity utilization of 35,280 spindles was concerned, therefore the department was right in seeking to collect the tax relatable to the excess utilized capacity through the assessment order dt. 24.11.2005 duly allowing tax deferment on the tax attributable to the recognized capacity in the final eligibility certificate.

Whether the petitioner was entitled to deferment of tax for the production which was in excess of the production recognized in the eligibility certificate or not is the basic question, but what we feel that this question could be better assessed by the authorities as it involves certain questions of fact also, the interpretation of various clauses of G.O.Ms.No. 108 have to be made and that interpretation has to be made on the basis of facts and we feel that the matter should have been taken in appeal by the petitioner rather than to this Court.

Coming to the grievance of the petitioner that the order of assessment was made in haste without giving a show cause notice to the petitioner, it may be pointed out

that the respondent has claimed that notices were given to the petitioner, the petitioner even sought certain clarification and the department waited for his reply, but no reply was given.

For the reasons given hereinabove, we dismiss all the writ petitions granting liberty to the petitioner to file appeal/s. Since this Court had entertained these writ petitions and granted stay also, therefore the delay in filing the appeal/s may be condoned by the authorities concerned, if filed within a period of two weeks from today. No costs.

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BILAL NAZKI J.

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G.CHANDRAIAH J.

Dt.25.8.2006
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